

EXHIBIT G

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK : PART 60

3 -----X
4 CASITA, LP,

5 Plaintiff(s),

6 - against -

Index No.

603525/05

7
8 MAPLEWOOD EQUITY PARTNERS (OFFSHORE) LTD.,

9
10 Defendant(s).

11 -----X
12 November 10, 2005
13 60 Centre Street
14 New York, New York

15 B E F O R E: HONORABLE BERNARD J. FRIED, JSC

16 A P P E A R A N C E S:

17
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25 BRIAN P. MILLER, ESQ., Pro hac vice

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1 THE COURT: All right. I have a lot of
2 papers. Let me make sure I have what I should have.
3 But before I start, why don't you give me just your
4 names, last names, starting from the left so that I
5 will know who I am facing here in the courtroom.

6 MR. SALOMON: Chester Salomon, S-a-l-o-m-o-n.

7 MR. MILLER: Good morning, your Honor. Brian
8 Miller, pro hac vice.

9 MR. KARLAN: Good morning your Honor,
10 Mitchell Karlan for the plaintiff. With me at counsel
11 table is my colleague, Richard Falek, F-a-l-e-k.

12 THE COURT: All right. I have three motion
13 sequences, and for administrative purposes let me just
14 make sure I have what I should have.

15 The first sequence which is really not --
16 well, the first is the original order to show cause.
17 And I have the papers that were filed; the complaint,
18 the memo in support of that, and an affidavit of
19 Mitchell Karlan with all of the attached papers. That
20 was, essentially, held in abeyance. Well, I probably
21 shouldn't use those words because that may not be
22 correct.

23 The next is sequence number 03, and in that I
24 have the memorandum of law in support of the motion to
25 disqualify with an affidavit of Robert Reale, an

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1 affidavit of Robert Glaser, an affirmation of
2 Mr. Karlan in opposition, an affirmation of a
3 Mr. Kislin, an affirmation of Richie Falek in
4 opposition, the memorandum in opposition, and reply
5 memo in support of the motion.

6 Then I have what is sequence number 02 which
7 is the application to intervene. I have the motion to
8 intervene, the memorandum in support of that motion, an
9 affidavit of a Constantine Pourakis.

10 So those are the papers that I have. Do I
11 have everything that I should have?

12 MR. KARLAN: Your Honor, we got a call from
13 chambers -- I think it was from chambers -- yesterday
14 asking that we deliver courtesy copies of everything to
15 you. At that time we also tried -- and I hope
16 succeeded -- in delivering to you a transcript of an
17 oral argument.

18 THE COURT: Yes, that's attached. The one
19 before Judge Chin?

20 MR. KARLAN: Yes.

21 THE COURT: That's attached to one of the
22 affidavits.

23 MR. KARLAN: Very good.

24 THE COURT: And the reason we called for
25 courtesy copies is part of these files got mislaid. I

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1 was reading the papers and I realized I didn't have
2 everything.

3 Okay. So do you I have everything I should
4 have, Mr. Miller?

5 MR. MILLER: Your Honor, do you have the
6 complaint and Mr. Karlan's affidavit in support of the
7 TRO papers? I apologize because we did not attach
8 those to our papers, but I have an extra copy as well.

9 THE COURT: I have the original complaint in
10 this action, and I have the affirmation of Mr. Karlan
11 in support of the order --

12 MR. MILLER: Okay.

13 THE COURT: -- seeking the TRO and
14 preliminary injunction.

15 MR. MILLER: Okay. We have extra copies in
16 case your Honor needed them.

17 THE COURT: No. I have those papers.

18 All right. So this is a motion to
19 disqualify. I will hear the application.

20 MR. MILLER: Your Honor, if it is all right,
21 I would like to argue on behalf of the defendant.

22 Brian Miller, of Akerman Senterfitt, which is
23 in Miami. I believe we filed pro hac vice papers.

24 THE COURT: And I think I signed them,
25 didn't I?

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1 MR. MILLER: I believe you may have, your
2 Honor. I can't recall because there are several
3 different lawsuits, and I know that Mr. Salmon's
4 colleague who is in court in White Plains this morning
5 advised that he received an order either from you or
6 from Justice Freedman. And I am sorry but I don't
7 recall which it was.

8 THE COURT: Is there a pending matter
9 involving these parties before Justice Freedman?

10 MR. MILLER: A related matter. It is not
11 between these two exact parties.

12 THE COURT: Why are they in two different
13 parts? Was it not designated as a related case if it
14 is related?

15 MR. MILLER: As the defendant, I don't think
16 I could answer that question, your Honor.

17 THE COURT: Mr. Karlan?

18 MR. KARLAN: Your Honor, the case that is
19 before Justice Freedman was actually before you
20 briefly. It was brought on by order to show cause. It
21 is a motion for summary judgment in lieu of the
22 complaint. There was an application to disqualify
23 filed --

24 THE COURT: There was an application to do
25 what?

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1 MR. KARLAN: To disqualify counsel in that
2 case as well, and your Honor set it down for hearing.
3 Justice Freedman was out that day.

4 Your Honor, it is -- it is different parties.
5 The lawyers are the same, but the parties are
6 different.

7 THE COURT: I get a lot of orders to show
8 cause for her when she is away on vacation or on a
9 trip; and so unless somebody told my, I wouldn't have
10 bothered to check it against my files.

11 MR. KARLAN: It is a different plaintiff and
12 different defendant, your Honor.

13 THE COURT: A different plaintiff? It is not
14 Casita or Casita-related parties?

15 MR. KARLAN: The plaintiff in this case is
16 Casita. The plaintiff in that case is called Eugenia.

17 THE COURT: Isn't Eugenia an investor in
18 Casita, or is it AMC?

19 MR. KARLAN: Eugenia made a loan to AMC.
20 Casita is a shareholder in the offshore fund.

21 THE COURT: Why would they not be kept
22 together as a related matter? I mean, isn't it the
23 same overall transaction?

24 MR. KARLAN: Your Honor, I have no objection
25 to being in front of the same justice.

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1 THE COURT: Well, I am not looking for
2 additional work. I am just curious as to why --

3 MR. KARLAN: The case in front of Justice
4 Freedman was filed first.

5 THE COURT: I did this by order to show cause
6 in the summertime. There was a TRO application here,
7 correct?

8 MR. KARLAN: In the Casita case, yes. And
9 the clerk sent us up here to see you. We needed an
10 immediate TRO, and you were the judge we were sent to
11 see.

12 I have absolutely no objection to the two
13 cases being in front of the same judge. I only point
14 out the plaintiffs and the defendants are different.

15 THE COURT: I understand that. And I have
16 been through these papers enough to know that this is a
17 confusing transaction, and hopefully you will all
18 elucidate it for me this morning. But the question is:
19 Has she held any proceedings on the disqualification
20 motion?

21 MR. KARLAN: The answer is no, your Honor.
22 We will have oral argument on the disqualification
23 motion today at 2:30 in front of Justice Freedman.

24 THE COURT: And it is the same group of
25 lawyers?

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1 MR. KARLAN: Yes.

2 MR. MILLER: Yes.

3 MR. KARLAN: We scheduled it that way so that
4 Mr. Miller would not have to fly up twice -- excuse me,
5 your Honor, but I am told it is at 2:00 and not 2:30.

6 MR. MILLER: Your Honor, with respect to the
7 courts in which these cases appear, we really have no
8 view one way or the other whether they are both heard
9 in front of you, in front of Justice Freedman, or in
10 front of some other person. They are scheduled for
11 oral argument in front of you right now and in front of
12 her this afternoon. So I am not sure how your Honor
13 would like to proceed with that.

14 THE COURT: I'll tell you what I am going to
15 do. I am going to listen to the arguments here now.
16 When I finish, I am going to talk to Judge Freedman at
17 lunchtime. I wish I had known this before because I
18 would have already spoken to her. Not that we have the
19 right to take the cases out of ordinary sequence, but
20 if the issues are the same -- are they the same issues?

21 MR. MILLER: They are not exactly parallel,
22 your Honor, but they are similar.

23 As you note from our papers, all the
24 entities, Eugenia and Casita, are affiliated, and all
25 of the MapleWood entities are affiliated on the other

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1 side. And this all relates to the failure of AMC
2 Computer in which Eugenia alleges they suffered loss
3 because their loan went into default.

4 THE COURT: At the very least somebody is
5 going to have to understand the same complex
6 transactions to resolve it here and in the afternoon,
7 is that correct?

8 MR. MILLER: It certainly would be helpful.

9 THE COURT: Do you agree with that,
10 Mr. Karlan?

11 MR. KARLAN: Your Honor, are you asking
12 whether the two cases are related on the merits? The
13 merits have absolutely not --

14 THE COURT: They are not. I understand that.

15 Maybe I should keep my mouth shut because the
16 lawyers know more about a case than a judge would ever
17 know. If you didn't relate it, it is not related.

18 I am going to proceed to with this case here.
19 I will mention to Justice Freedman that I heard
20 argument in the case where it may have the same issues,
21 and she will talk to you this afternoon and do whatever
22 she wants to do. I don't have the right to take a case
23 from her. I don't have the right to do that under the
24 rules. We have a random assignment. But let me just
25 mention it to her so she will know about it and won't

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1 be surprised, and you can discuss it with her.

2 So, counsel, let's start with this case. I
3 think I understand some of these transactions. I read
4 Judge Chin's transcript with great interest. I gather
5 he has not yet decided the question, though he did
6 indicate he had grave doubts at the end about whether
7 the disqualification motion should be granted or not.
8 Is that a fair reading?

9 MR. MILLER: I would characterize it that he
10 looked at some of the papers. He felt there was enough
11 to look at, and by the end of the hearing he had, sort
12 of, talked himself into a position that he wasn't sure
13 whether he was going to grant disqualification, but he
14 has not ruled.

15 THE COURT: That's a fair characterization.
16 Okay, let me hear from you.

17 MR. MILLER: Your Honor, I think that this
18 case is probably a little more open and shut than the
19 case in front of Judge Chin. All of these different
20 matters relate to a company called AMC Computer which
21 went defunct in the summer of 2005. It is in an
22 assignment for benefit of creditors. The secured
23 creditor, the only, was a company called Eugenia which
24 is controlled by, indirectly by a man named Hans
25 Werner-Hector.

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1 THE COURT: Eugenia was a creditor of AMC,
2 correct?

3 MR. MILLER: Correct.

4 THE COURT: Set up a credit facility with
5 AMC?

6 MR. MILLER: Sorry?

7 THE COURT: There was a credit facility set
8 up between AMC and Eugenia?

9 MR. MILLER: Correct.

10 THE COURT: When did that take place, was it
11 in 2002?

12 MR. MILLER: As of January 30, 2003.

13 THE COURT: Okay.

14 MR. MILLER: And it was declared in default
15 on May 6, I believe, of 2005.

16 All of the various lawsuits, about ten or
17 eleven lawsuits in total, some in state court, some in
18 federal Court, some filed by Eugenia, this one filed by
19 Casita; they all arise out of a failure of AMC Computer
20 and Eugenia's resulting loss. They sued directors,
21 officers. They brought breach of contract claims,
22 fraud claims, breach of fiduciary duty claims. They
23 are in various proceedings all seriatim rather than
24 consolidated.

25 Casita is the plaintiff in this case. Casita

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1 is an equity investor. And an equity fund, MapleWood
2 Offshore Fund, is the defendant here. Also, Casita is
3 an equity investor in AMC Computer through another
4 special purpose vehicle called AMC Investors. So think
5 of it this way, your Honor; Casita is the equity
6 investor in AMC Computer, and Eugenia is the lender.
7 Also just to make sure your Honor is clear, the
8 MapleWood Offshore Fund, the defendant here, also is a
9 co-investor in this entity, AMC Investors, with Casita
10 which in turn owns stock in AMC Computer. So Casita is
11 an indirect equity investor in AMC through two
12 different angles. One, through MapleWood Offshore. It
13 invested something like \$22 million in the offshore
14 fund, a large portion of that was used to invest in AMC
15 Computer. And Casita invested \$2.5 million separately
16 into AMC Computer through this other vehicle, AMC
17 Investors.

18 I understand that it is probably very
19 confusing to your Honor. It is confusing to me as
20 well.

21 THE COURT: Actually, it is quite clear the
22 way you said it.

23 MR. MILLER: That may be the first time I
24 explained it clearly, so thank you.

25 Now, the lawyers involved that we are seeking

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1 to disqualify at Gibson Dunn have a long history
2 related to MapleWood and AMC Computer.

3 THE COURT: You use the word "MapleWood."
4 You need to be careful. Isn't there a MapleWood
5 Partners and a MapleWood Equity? And if I read the
6 papers correctly -- and you will explain why I may be
7 mistaken -- Partners is the manager of Equity, and they
8 are two separate entities; is that correct?

9 MR. MILLER: Yes. I could try to elucidate
10 that for your Honor as well.

11 The various MapleWood entities are all under
12 one umbrella, so to speak. There is an entity called
13 MapleWood Holdings, and there is a gentleman named
14 Robert Glaser who is the managing member of MapleWood
15 Holdings. MapleWood Holdings in turn is the general
16 partner in MapleWood Partners as well as another entity
17 called MapleWood Management.

18 THE COURT: MapleWood Partners has two
19 holders, two partners. The general partner is one, and
20 is MapleWood Holdings -- and who are the others?

21 MR. MILLER: Your Honor, the limited partners
22 are five or six individuals including Mr. Glaser and
23 other employees and former employees of MapleWood
24 Partners. MapleWood Partners is where the people are.
25 All of the employees who are involved in management and

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1 advisory services to these funds in the portfolio
2 companies are all employed by MapleWood Partners.
3 MapleWood Partners provides advisory services to the
4 two equity funds, one of which is a defendant here,
5 MapleWood Offshore Fund, and the other one which is a
6 parallel fund called the MapleWood Domestic Fund.

7 THE COURT: What? Domestic?

8 MR. MILLER: I will call it for purposes of
9 this hearing --

10 THE COURT: Domestic?

11 MR. MILLER: Yes. Technically it is
12 MapleWood Equity Partners LP.

13 THE COURT: I saw that.

14 MR. MILLER: And the technical name of the
15 defendant here is MapleWood Equity Partners Offshore
16 Limited.

17 Together these two funds raised \$135 million,
18 approximately, to invest in a number of portfolio
19 companies, one of which was AMC Computer.

20 Now, if your Honor would permit me, I have a
21 graphic which I provided to opposing counsel which I
22 would like to use to try to demonstrate some of this.

23 THE COURT: I assume, Mr. Karlan, you have
24 no objection to these?

25 MR. KARLAN: No. We got these yesterday in

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1 front of Judge Chin.

2 THE COURT: Maybe I should just give this all
3 to Judge Chin?

4 MR. KARLAN: We are happy to do that, your
5 Honor.

6 MR. MILLER: Why not, your Honor.

7 THE COURT: Go ahead, Mr. Miller.

8 MR. MILLER: Your Honor, the board that I
9 have put in front of you is the chronology of the
10 representation that is at issue and the entire AMC
11 Computer saga. As you will see, Gibson Dunn has
12 represented MapleWood Partners' executive Mr. Glaser
13 for years and years. So it is a long-standing history.
14 That's not the reason we are seeking to disqualify
15 them.

16 THE COURT: Tell me the name of the executive
17 again, please?

18 MR. MILLER: Glaser, G-l-a-s-e-r. Robert is
19 his first name.

20 As I mentioned previously, your Honor, he is
21 the managing member of MapleWood Holdings, the
22 MapleWood parent company.

23 THE COURT: I understood that.

24 MR. MILLER: Now, in 1998, the Gibson Dunn
25 attorneys that we are seeking to disqualify established

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1 the entire structure of MapleWood and its constituent
2 companies. They drafted the documents for the
3 MapleWood Offshore Fund, they drafted the subscription
4 agreement that is at issue in this case. They
5 negotiated that subscription agreement with Casita, the
6 plaintiff in this case, they drafted the various
7 documents setting up the corporate structure of all the
8 various MapleWood entities, and they provided advice to
9 MapleWood with respect to the default provisions.
10 Again, the governing documents of the MapleWood
11 Offshore Fund at issue in this case. So, these
12 attorneys provided advice on issues substantially
13 related --

14 THE COURT: Is there any issue realistically
15 with regard to the documents in the sense that one
16 would need to take extrinsic evidence or documents
17 themselves, for -- for example, the various provisions
18 that I saw, are those provisions, the meaning of them,
19 in dispute that would require parole evidence?

20 MR. MILLER: Yes, your Honor. As set forth
21 in our reply papers, there are. I think probably the
22 clearest issue is that in the complaint in
23 Paragraphs 5, 18, 22, 24 and 27, Casita alleges that
24 the --

25 THE COURT: Just give me a second to get to

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1 it.

2 MR. MILLER: Certainly, your Honor.

3 (Brief pause)

4 THE COURT: Paragraph 5 refers to the capital
5 call.

6 MR. MILLER: Yes, your Honor.

7 THE COURT: What could be the issue in the
8 agreement as to the capital call? It was bona fide
9 under the agreement or not?

10 MR. MILLER: The plaintiffs are contending
11 that the capital call is invalid because, among other
12 reasons, it is to be used to fund what they deemed to
13 be illegitimate expenses of the MapleWood Offshore
14 Fund.

15 THE COURT: How does that call into question
16 the drafting of this agreement?

17 MR. MILLER: The plaintiffs have cited to no
18 provision in the agreement that sets forth what
19 expenses are legitimate or illegitimate. So I think
20 since they can't cite any particular provision in the
21 agreement that clearly addresses this issue, then by
22 definition there is going to have to be some extrinsic
23 evidence that the plaintiff puts on in order to prove
24 its allegation that the expenses underlying the capital
25 call are, in fact, illegitimate.

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1 THE COURT: The people who signed it
2 understood what it meant, didn't they?

3 MR. MILLER: There could be testimony from
4 the people who signed it as to their understanding of
5 it. And they probably would be speaking regarding
6 their understanding of it based on their discussions
7 with the Gibson Dunn attorneys who drafted the
8 document.

9 THE COURT: On this particular issue, if it
10 came to that, then maybe disqualification is necessary,
11 but is it premature to seek to disqualify before this
12 becomes a ripe issue.

13 MR. MILLER: I don't believe it is premature,
14 your Honor, because the complaint is pretty clear that
15 they think the capital call is invalid because the
16 expenses are illegitimate. They outlined that
17 position, and that's something we are going to have to
18 start addressing immediately in this case whether
19 Gibson Dunn is counsel or not. And there is no reason
20 to wait for a trial or some proceeding later on in the
21 case when we have gone down the road.

22 THE COURT: What other issues are there on
23 the face of this complaint which calls into question
24 the representation by Gibson Dunn who, as you say and I
25 think it is not disputed, drafted the subscription

1 agreement?

2 MR. MILLER: The issues I think are relevant
3 here are with respect to the illegitimacy of the
4 capital call. The capital call relates to three
5 different items, if I recall correctly.

6 First, there is payment on a guarantee by the
7 offshore fund related to AMC Computer. Second, there
8 were indemnification expenses to be paid related to
9 Eugenia's litigation. And third, there are
10 indemnification expenses to be paid related to
11 litigation involving another portfolio company that has
12 nothing at all to do with AMC Computer.

13 Now, with respect to the first of those
14 items, the guarantee, the Gibson Dunn attorneys
15 provided legal advice -- and I apologize that we don't
16 have this in our papers but my client advised me last
17 night about this. I have an e-mail I would be happy to
18 provide to counsel and to your Honor that we proffer
19 this, and we would be happy to submit additional
20 affidavit evidence, if necessary.

21 THE COURT: I don't think I can at this
22 juncture consider what is not in the papers. So let's
23 deal with what is in the paper.

24 MR. MILLER: Okay. But, your Honor, we may
25 have to renew based on that issue.

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1 THE COURT: That may be, but let's deal with
2 what is before me and what the attorneys have had an
3 opportunity to respond to.

4 MR. MILLER: With respect to the expenses for
5 indemnification related to the AMC Computer fiasco; as
6 set forth in our papers, there will be
7 cross-examination of the MapleWood witnesses by Gibson
8 Dunn related to who was responsible for the alleged
9 fraud at AMC Computer, who knew what when. That's
10 something that is extrinsic to the agreements that were
11 drafted.

12 The plaintiff contends in its objection to
13 the capital call that the indemnification expenses are
14 improper because the MapleWood people participated in
15 some kind of alleged fraud or breach of fiduciary duty
16 with respect to AMC Computer. So in order to prove
17 that the expenses are illegitimate in that regard, it
18 will be necessary for Gibson Dunn to get into issues
19 related to its representation of these people with
20 respect to AMC Computer, with respect to their
21 oversight of AMC Computer, and other issues. That's
22 something that is also extrinsic to the documents in
23 question.

24 Other issues within the documents in question
25 are as follows:

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1 Casita contends that the capital call was
2 invalid because it was made after May 2004. That gets
3 into interpretation of the contract as to when the
4 final termination date under the agreement was, and,
5 therefore, whether a capital call after May 2004 is
6 valid or not; as well as the provision we cited in our
7 papers in the agreement that provides that expenses --
8 I'm sorry, let me rephrase that. As well as a
9 provision in the agreements that we cited that the fund
10 can make an additional capital call even after that
11 termination date, whatever it may be, to fund expenses
12 which the indemnity and the guarantee relate to.

13 So it would be necessary to interpret what
14 that provision means, whether the fund is allowed in
15 its governing documents to make a capital call after
16 May 2004 or not.

17 Bear with me a second, please?

18 THE COURT: Yes.

19 (Brief pause)

20 MR. MILLER: The other issue that Casita
21 complained about in its complaint was that they claimed
22 the capital call was invalid because it was unclear
23 whether it was made on behalf of the MapleWood Domestic
24 Fund or the MapleWood Offshore Fund, and exactly what
25 the amount of Casita's investment was.

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1 The capital call referred to a \$17.8 million
2 figure which they contend was confusing. So that will
3 get into issues whether under the subscription
4 agreement and the governing documents that the Gibson
5 Dunn attorneys drafted, whether that provides a
6 legitimate basis to --

7 THE COURT: I am going to hear in a moment, I
8 know, from Mr. Karlan in response, but what I don't
9 understand as I listen to you is if the subscription
10 agreement is essentially what is at issue here, is it
11 your position that the extrinsic evidence from the
12 witnesses who participated in and executed that
13 agreement will somehow breach a -- or require
14 disclosure of confidential communication between the
15 parties, Gibson Dunn and those parties?

16 MR. MILLER: It may require breach of that if
17 they obtained advice from Gibson Dunn with respect to
18 what the governing documents mean, which they did
19 obtain advice.

20 THE COURT: Wouldn't they be required to
21 testify as to their understanding of the document,
22 their understanding? What is not at issue will be what
23 the attorneys told them, unless there is some kind of
24 defense of counsel here. But isn't it their
25 understanding and not the source of that understanding?

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1 But isn't what is relevant their own understanding of
2 what the terms of the documents meant as they executed
3 and signed them? Isn't that the issue in this case?

4 MR. MILLER: Yes. But where did they gain
5 that understanding? They gained that understanding
6 from their attorneys. And that's why this case is
7 substantially related to the prior representation.

8 THE COURT: I still understand that you
9 haven't gone through the chart yet for me, but I have a
10 threshold question.

11 If I am presented with -- if my attorney
12 gives me advice and I sign some kind of a contract, and
13 you inquire of me what my understanding of that
14 contract is and I describe to you what my understanding
15 of the contract is; isn't that what is relevant, not
16 what I was told, unless there is some defense that I am
17 relying on advice of counsel?

18 MR. MILLER: Well, your Honor --

19 THE COURT: Am I missing something?

20 MR. MILLER: That is relevant, but the test
21 in disqualification is not whether -- your Honor, this
22 is not a seeking to disqualify them based on as a
23 witness, a lawyer witness. That's not what we are
24 seeking here.

25 THE COURT: I understand.

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1 MR. MILLER: The test is whether the prior
2 representation is substantially related to the present
3 case. The present case involves interpretation of
4 agreements. The prior representation was
5 interpretation and drafting of those agreements. So
6 the Court need not inquire into what the confidences
7 were that were discussed, what was disclosed.

8 THE COURT: It is the substantial
9 relationship prong of the disqualification cases that
10 you are relying on?

11 MR. MILLER: Correct, your Honor. Because
12 these matters are substantially related. And that's
13 what your Honor needs to decide, not whether there is
14 going to be testimony from Gibson Dunn.

15 THE COURT: I appreciate that. And a part of
16 the substantial connection, substantial relationship
17 test is that the document itself is substantially
18 related to this, or the issue is related to the issues
19 in this case? I am trying to understand how they are
20 related.

21 MR. MILLER: Well, they are related by
22 looking at the complaint. You can see what the
23 plaintiff is seeking here is to declare that it need
24 not respond to a capital call under the subscription
25 agreement and the articles of association that the same

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1 lawyers drafted and provided advice to. That's what
2 this entire case relates to. It relates to whether
3 they are obligated to pay our client \$700,000 under
4 these documents or not.

5 THE COURT: Why don't you go back to the
6 chronology. You were telling me that in 1998 the
7 structure was --

8 MR. MILLER: Right. That's when the
9 structure was set up, the articles were drafted. The
10 subscription agreement was negotiated with Casita, and
11 we put in affidavit evidence that the Gibson Dunn
12 attorneys participated in the negotiation of that
13 agreement with Casita.

14 Only briefly, I will discuss the rest of the
15 timeline because I think it is important background and
16 it is relevant to the question of whether the expenses
17 are illegitimate or not.

18 Gibson Dunn continued to provide meaningful
19 and substantial advice to MapleWood and their
20 investment at AMC Computer, ongoing advice with respect
21 to the investment at AMC Computer and other matters all
22 the way up until June of 2005 after they filed
23 litigation related to this that they unilaterally
24 decided that they were no longer representing
25 MapleWood.

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1 I think that ties into the other aspect of
2 our motion to disqualify, which is the conflict waiver
3 that Gibson Dunn asked for and obtained in this case.

4 THE COURT: The waiver I read. It doesn't
5 involve any of the -- it doesn't involve this MapleWood
6 entity.

7 MR. MILLER: The waiver on the one hand
8 clearly was signed by Casita. I don't think there is
9 any question about that.

10 THE COURT: Right.

11 MR. MILLER: On the other side it was signed
12 by MapleWood Partners, the advisor to the MapleWood
13 Offshore Fund, and in the conflict waiver agreement.

14 THE COURT: It uses the word "affiliates."

15 MR. MILLER: Yes.

16 THE COURT: Is that a factual question that I
17 need to decide by way of a hearing or reference, or are
18 the papers sufficient for me on what has been submitted
19 to conclude that MapleWood Partners -- I want to get
20 the names right because I think it is important -- that
21 MapleWood Partners and MapleWood Offshore are
22 affiliates? Do I have enough in the papers to be able
23 to conclude one way or the other?

24 MR. MILLER: I believe you do, your Honor.
25 Of course if you want to have further evidence, I

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1 think --

2 THE COURT: I am asking you whether you are
3 satisfied that I have sufficient evidence before me to
4 decide that, because I believe it is a factual
5 question. Is that correct?

6 MR. MILLER: Yes, I do believe you have
7 sufficient evidence before you.

8 THE COURT: Okay.

9 MR. MILLER: You have affidavits from the
10 MapleWood employees attesting to the structure of these
11 companies and the fact that they are all affiliated.
12 You have affidavit evidence with respect to Mr. Glaser
13 and MapleWood Holdings being the general partner -- I'm
14 sorry, the managing member of MapleWood Partners which
15 is in turn advisor to the MapleWood Funds.

16 So I think that you do have adequate evidence
17 to show on this side of the table that MapleWood
18 Partners and MapleWood Offshore Fund are affiliated.

19 THE COURT: Is the word "affiliate" a word
20 that has an agreed upon definition or is it a word that
21 I myself will have to construe?

22 MR. MILLER: I believe that you will have to
23 construe it because the plaintiff contends that
24 "affiliate" is very narrowly defined to mean only an
25 entity that owns another entity. And their evidence on

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1 that is the unilateral and self-serving declaration of
2 Barbara Becker, a Gibson Dunn partner, who says, When I
3 drafted this that's what I meant. Of course I never
4 told the clients that's what I meant. I never told the
5 clients that this is a limited definition of
6 "affiliate."

7 THE COURT: So how do I resolve on the papers
8 the issue of what is or what is not referred if there
9 is conflicting evidence submitted by way of affidavits?

10 MR. MILLER: We have cited to case law and
11 statutes, your Honor --

12 THE COURT: You have?

13 MR. MILLER: -- which I would point out that
14 the plaintiff completely ignored, which define what an
15 affiliate means.

16 An affiliate is broadly construed to say that
17 somebody who owns a small part, somebody who owns a
18 large part, somebody who controls, somebody who is
19 under common control with.

20 So let's take the MapleWood Offshore Fund.
21 It is certainly within common control with MapleWood
22 Partners, the signatory of the conflict waiver
23 agreement. As I outlined, Mr. Glaser controls
24 MapleWood Partners through his managing member interest
25 in MapleWood Holdings and its general partnership

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1 interest in MapleWood Partners.

2 With respect to MapleWood Offshore Fund, it
3 is managed and it is advised, in other words, it is
4 controlled --

5 THE COURT: It doesn't necessarily mean
6 control, does it?

7 MR. MILLER: I believe it does. The fund can
8 only operate through its manager under the agreements
9 and its advisor. A manager in MapleWood Management,
10 which is another entity, under common control with
11 MapleWood Holdings --

12 THE COURT: Well, offshore is a separately
13 created entity, is it not?

14 MR. MILLER: It is.

15 THE COURT: And as a member of that
16 separately created -- and MapleWood Partners is not a
17 member of that, it is simply a manager?

18 MR. MILLER: It is a Cayman Islands
19 corporation, your Honor. If you look at the articles
20 of incorporation which were attached to Mr. Karlan's
21 affidavit and submitted with the TRO papers --

22 THE COURT: I don't think I remember them.
23 Let me see. What am I looking for?

24 MR. MILLER: It is exhibit D to Mr. Karlan's
25 TRO.

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1 THE COURT: D as in David?

2 MR. MILLER: Yes. To Mr. Karlan's TRO
3 affidavit.

4 THE COURT: I have it in front of me.

5 MR. MILLER: If you look at page -- after the
6 title page in the table of contents --

7 THE COURT: My exhibit d is a letter.

8 MR. MILLER: Let me look again.

9 Is your Honor looking at Mr. Karlan's
10 affidavit in support of order to show cause for a
11 temporary restraining order?

12 THE COURT: I am indeed, but it may be out of
13 sequence. What does the document look like?

14 MR. MILLER: The document is entitled
15 Articles of Association --

16 THE COURT: Okay, I have it. Mine is
17 Exhibit E.

18 MR. KARLAN: So is mine.

19 THE COURT: Okay. MapleWood Equity Partners
20 Offshore Limited, 1999.

21 MR. MILLER: Yes. Exhibit E, I'm sorry.

22 THE COURT: Not a problem. What paragraph?

23 MR. MILLER: After the table of contents on
24 the very first page you will see the advisor listed as
25 MapleWood Partners.

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1 THE COURT: "Advisor" means MapleWood
2 Partners LP, yes?

3 MR. MILLER: If you turn to Page 8 of the
4 articles, you will see the definition of "manager"
5 which is defined as MapleWood Management.

6 THE COURT: I have that.

7 MR. MILLER: Also, if you look back on the
8 first page you will see the definite board of
9 directors.

10 THE COURT: Board of directors?

11 MR. MILLER: Yes. That consists of
12 Mr. Glaser, another gentleman named Mr. Dagrosa, and a
13 third gentleman whose name escapes me now, that were
14 all MapleWood people put on the board of the
15 association. I could supplement and represent that is
16 the case, but it was not set forth in the affidavits.

17 THE COURT: It is your position that this
18 article -- that these articles of association which set
19 forth who the advisor and who the manager is must mean
20 that these individuals, MapleWood Management and
21 MapleWood Partners therefore have control over
22 MapleWood Offshore?

23 MR. MILLER: That's correct. Therefore, they
24 control and they are under common control with
25 MapleWood Holdings.